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Dean Transportation, Inc. and Grand Rapids Educational Support Personnel Association, Michigan Education Association

Dean Transportation Employees Union and Grand Rapids Educational Support Personnel Association, Michigan Education Association. Cases 7–CA–49003 and 7–CB–15014

June 21, 2007

DECISION AND ORDERS

BY CHAIRMAN BATTISTA AND MEMBERS
LIEBMAN AND KIRSANOW

The principal issues in this case are whether Dean Transportation violated Section 8(a)(5) and (1) of the Act by failing and refusing to recognize and bargain with Grand Rapids Educational Support Personnel Association (GRESPA) as the representative of a unit of its employees, and violated Section 8(a)(1), (2) and (3) by recognizing Dean Transportation Employees Union (DTEU) as the representative of the bus drivers in the unit and imposing the terms of its collective-bargaining agreement with DTEU, including the union-security clause.¹

We agree with the judge, for the reasons stated in his decision, that Dean Transportation violated the Act as

¹ On September 27, 2006, Administrative Law Judge Michael A. Marcionese issued the attached decision. Dean Transportation and DTEU filed exceptions and supporting briefs. GRESPA filed answering briefs. In unpublished orders, the Board has denied the requests of the Mackinac Center for Public Policy and the Michigan Chamber of Commerce to participate as amici curiae.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions and to adopt the recommended Orders.

Dean Transportation has requested oral argument. The request is denied as the record, exceptions, and briefs adequately present the issues and the positions of the parties.

Dean Transportation has moved the Board to stay this proceeding because a Board decision could become "moot" as a result of a state court proceeding initiated by GRESPA alleging a violation of the Michigan Open Meetings Act by the Grand Rapids Public Schools (GRPS), and of a grievance/arbitration proceeding initiated by GRESPA against GRPS alleging a violation of a subcontracting provision in their collective-bargaining agreement. We deny the motion. The Board has exclusive jurisdiction to hear the unfair labor practice allegations before it and to order appropriate remedies for any violations found. The Board will not delay imposing remedies for unlawful activity here simply because there is a possibility that pending claims in other fora and against another party may affect the remedies. The effects, if any, of those other proceedings on the implementation of the Board's remedies can be raised in compliance proceedings.

alleged, and that DTEU violated Section 8(b)(1)(A) and 8(b)(2) by accepting recognition and applying the terms of the collective-bargaining agreement. We also agree with the judge's underlying findings that (1) Dean Transportation is the successor to Grand Rapids Public Schools (GRPS) as the employer of bus drivers, mechanics, and route planners at its 900 Union Street facility (the unit);² (2) GRESPA is a labor organization within the meaning of Section 2(5); (3) the unit is an appropriate bargaining unit;³ (4) the bus drivers in the unit were not accreted to the DTEU bargaining unit;⁴ and (5) GRESPA

² As the judge found, there was substantial continuity between the operations of the facility under GRPS and under Dean Transportation. It is well established that the Board may find substantial continuity even where, as here, a successor employer has taken over only a discrete portion of the predecessor's bargaining unit. *Van Lear Equipment, Inc.*, 336 NLRB 1059, 1063–1064 (2001); *Bronx Health Plan*, 326 NLRB 810 (1998), *enfd. mem.* 203 F.3d 51 (D.C. Cir. 1999).

Atlantic Technical Services Corp., 202 NLRB 169 (1973), cited by Dean Transportation, is not to the contrary. In that case, the Board found that a small company that took over the mail distribution function from aviation giant TWA was not TWA's successor. There, however, the new unit contained only 27 employees out of the TWA nationwide unit of 14,000, 1100 of whom were based at the same facility. Moreover, the Board expressly noted that the employees in question had been accreted to the overall TWA unit, and that there had never been a showing that a majority of those employees supported the union. The Board was unwilling to find successorship in those "peculiar circumstances." *Id.* at 170.

Nothing like those "peculiar circumstances" exists here. The GRPS bargaining unit included 536 workers, 168 of whom worked at the 900 Union Street facility. A large majority of those 168 employees continued working at the facility after the change in management. These numbers do not represent a significant enough change in the scale of the unit or the business to alter our finding of substantial continuity. And unlike the unit at issue in *Atlantic Technical*, the employees at the 900 Union Street facility had not simply been accreted into the larger GRPS unit, but rather had been part of that larger unit since its initial certification by the Michigan Employment Relations Commission in 1993.

³ The Respondent Employer argues that the judge improperly ignored the Board's decision in *Dattco, Inc.*, 338 NLRB 49 (2002), where the Board found a single bus depot to be an inappropriate bargaining unit. But that case is easily distinguishable on its facts because the operation of the facility in *Dattco* was completely integrated with a network of other facilities. Fully one-third of the bus drivers in *Dattco* were shuttled from their home facilities to other terminals on a daily basis, depending on the scheduling needs determined at a central headquarters. Upon arriving at the new facility, drivers were supervised by managers based at that other facility. Here, the drivers work exclusively out of their home facility, where their routes and runs are determined, and where they are supervised by the local managers. This autonomy of the 900 Union Street facility over day-to-day operations contributes to our finding that it is an appropriate unit and distinguishes it from the facility in *Dattco*.

⁴ In addition to the factors relied on by the judge, we find it relevant that the units represented by DTEU and GRESPA are dissimilar in composition. DTEU's preexisting unit has traditionally included only special-education bus drivers and attendants, whereas GRESPA has a history of representing a heterogeneous unit including bus drivers for

made an appropriate demand for recognition and bargaining.⁵

ORDER

The National Labor Relations Board adopts the recommended Orders of the administrative law judge and orders that the Respondent Employer, Dean Transportation, Inc., Grand Rapids, Michigan, its officers, agents, successors, and assigns, and the Respondent Union Dean Transportation Employees Union, and its officers, agents, and representatives, shall take the actions set forth in the Orders.

Dated, Washington, D.C. June 21, 2007

Robert J. Battista,	Chairman
Wilma B. Liebman,	Member
Peter N. Kirsanow	Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

A. Bradley Howell, Esq., for the General Counsel.
David E. Khorey, Esq. and *Kurt M. Graham, Esq.*, for Dean.
Michael L. Fayette, Esq., for the Respondent Union.
Fillipe S. Iorio, Esq., for the Charging Party.

both regular and special education students, as well as route planners and mechanics.

⁵ Citing the Board's decisions in *Motown Record Corp.*, 197 NLRB 1255 (1972), and *Chester Valley, Inc.*, 251 NLRB 1435 (1980), Dean Transportation contends that GRESPA's demand for recognition was ineffective because the unit description in its demand did not precisely match the unit alleged in the complaint to be appropriate. The Board rejected an identical argument in *Hydrolines, Inc.*, 305 NLRB 416, 420 (1991). As the Board there explained, when a union demands recognition based on a card majority in an initial organizing context, the union is aware of which employees it has been attempting to organize, and thus may be expected to present the employer with an accurate description of the unit it seeks to represent. Accordingly, in *Motown* and *Chester Valley*, the Board found imprecise bargaining demands inadequate in the initial organizing context. As the Board in *Hydrolines* also stressed, however, we do not expect perfect precision from a union bargaining demand in a successorship situation (such as this one), as the union may be unaware or uncertain of a successor's plans for its hiring and operations. Accordingly, GRESPA's demand for recognition was not infirm merely because its unit description deviated slightly from that in the complaint. In any event, the appropriate unit was set forth in the complaint, thus removing any doubt as to the identity of the unit sought, and Dean Transportation has still refused to recognize GRESPA. *Id.* at 420 fn. 29.

DECISION

STATEMENT OF THE CASE

MICHAEL A. MARCIONESE, Administrative Law Judge. I heard this case May 9 through 12, 2006, in Grand Rapids, Michigan. Grand Rapids Educational Support Personnel Association, Michigan Education Association (GRESPA) filed the charge against Dean Transportation, Inc. (Dean), the Respondent Employer, on October 14, 2005, and amended it on December 1, 2005.¹ GRESPA also filed the charge against Dean Transportation Employees Union (DTEU), the Respondent Union, on December 1. Based upon these charges, a consolidated complaint issued on December 28, alleging that the Respondent Employer violated Section 8(a)(1), (2), (3), and (5) of the Act and that the Respondent Union violated Section 8(b)(1)(A) and (2) of the Act in connection with the Respondent Employer's assumption of the school bus transportation contract with the Grand Rapids Public Schools (GRPS).

The complaint specifically alleges that Dean is a successor to GRPS with respect to a unit of employees previously represented by GRESPA;² that Dean failed and refused to recognize GRESPA as the exclusive collective-bargaining representative of the employees in that unit; that Dean interfered with employees' Section 7 rights by telling job applicants that DTEU would be their collective-bargaining representative and that they would have to join DTEU as a condition of employment; that Dean rendered unlawful assistance to DTEU by distributing applications for membership and dues-checkoff authorizations for DTEU to employees, by recognizing DTEU and applying the terms of Dean's collective-bargaining agreement with DTEU to employees at a time when DTEU did not represent an uncoerced majority of employees in the unit, and by deducting dues from employees and remitting them to DTEU; and that Dean encouraged membership in DTEU by prematurely recognizing that Union, applying the collective-bargaining agreement to unit employees and collecting and remitting dues to DTEU. The complaint alleges that DTEU violated the Act by accepting recognition from Dean at a time when it did not represent an uncoerced majority of unit employees and by accepting the dues that were collected by Dean from unit employees.

The Respondent Employer filed its answer to the complaint on January 9, 2006 denying many of the factual and legal allegations of the complaint and asserting several affirmative defenses. Specifically, the Respondent Employer denied that the Charging Party, GRESPA, was a labor organization within the meaning of the Act, denied that it was a successor with any obligation to recognize and bargain with GRESPA regarding the employees working under its contract with GRPS, and denied that it rendered unlawful assistance to DTEU or otherwise unlawfully encouraged membership in that Union. The Respondent Employer asserted, *inter alia*, that the employees it hired to work under its contract with GRPS were an accretion to an existing unit of employees represented by DTEU and that

¹ All dates are in 2005, unless otherwise indicated.

² The complaint was amended on March 6, 2006 to change the description of the allegedly appropriate bargaining unit.

it lawfully applied its collective-bargaining agreement with DTEU to those employees. The Respondent Union filed its answer to the complaint on January 10, 2006 interposing the same denials as the Respondent Employer and similarly asserting that it was the designated bargaining representative of the employees in question by virtue of its existing collective-bargaining agreement with the Respondent Employer.

On January 18, 2006, the Respondent Employer filed a motion with the Regional Director seeking a stay of these proceedings pending the outcome of state court, state agency, and arbitral claims brought by the Charging Party over GRPS' decision to award the school bus transportation contract to the Respondent Employer. The Respondent Employer argued that the Charging Party was seeking inconsistent remedies in the other proceedings and that resolution of those claims would moot the issues raised by the unfair labor practice complaint.³ The Regional Director denied the motion, by order dated February 1, 2006, on the basis that the parties and issues involved in the other proceedings were not the same as those in this proceeding and resolution of those other matters would not resolve the unfair labor practices alleged here. On February 17, 2006, the Respondent Employer filed the same motion with the chief administrative law judge in Washington.⁴ By order dated March 22, 2006, Associate Chief Judge Miserendino denied the motion.

The Respondent Employer also filed a Motion for Summary Judgment directly with the Board on February 20, 2006, arguing that the General Counsel failed to adequately plead a violation of Section 8(a)(5) of the Act because the unit alleged in the complaint was not the unit for which GRESPA allegedly sought recognition. The Respondent Employer further argued that the unit for which recognition was sought was inappropriate so that any refusal to bargain with GRESPA, as a matter of law, could not have violated the Act. By Order dated March 30, 2006, the Board denied summary judgment.

With the issues thus ripe for litigation, the hearing opened on May 9 with all parties ably represented by counsel. The parties began the hearing by entering into a detailed stipulation of facts with supporting documents demonstrating that most of the es-

sential facts in this case were undisputed. The parties then proceeded to call witnesses and offer other evidence as to the remaining factual disputes. On June 30, 2006, all parties filed briefs which laid out their respective position on the law and the facts. Having considered the arguments made by the parties, the testimony of the witnesses, including in particular my observation of their demeanor, and the documentary evidence in the record,⁵ I make the following

FINDINGS OF FACT

I. JURISDICTION

A. Commerce

The Respondent Employer, a corporation with offices and places of business in several cities, including Lansing and Grand Rapids, Michigan, provides transportation services for several school districts in the State of Michigan. The Respondent Employer annually derives gross revenues in excess of \$500,000 in the conduct of its business operations and purchases and receives at its Michigan facilities materials and supplies valued in excess of \$50,000 directly from suppliers within the State of Michigan who received those materials and supplies directly from points located outside the State of Michigan. The Respondents admit and I find that the Respondent Employer is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

B. Labor Organization

The Respondents admit that the Respondent Union is a labor organization within the meaning of Section 2(5) of the Act but deny that GRESPA, the Charging Party, is a labor organization as defined in the Act. The basis for the denial, as detailed in arguments made at the hearing and in the Respondent Employer's brief, is that GRESPA cannot be a labor organization under the Board's jurisdiction because it does not represent statutory "employees." The Respondents argue that, because the only individuals represented by GRESPA at the time it requested recognition were employees of GRPS, a municipality of the State of Michigan, GRESPA did not exist "for the purpose, in whole or in part, of dealing with *employers* concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work" (emphasis added). 29 U.S.C. §152(5).⁶

GRESPA is an organization comprised of individuals employed by GRPS in a variety of job classifications. It has represented a district-wide bargaining unit for many years, negotiating a series of collective-bargaining agreements, processing grievances on behalf of employees and otherwise acting on behalf of the employees in their dealings with management. GRESPA is an affiliate of the Michigan Education Association, which in turn is an affiliate of the National Education Association, which are organizations representing teachers and other employees in education-related positions throughout the coun-

³ The Charging Party Union had filed a grievance under its collective-bargaining agreement with GRPS as well as a charge with the Michigan Employment Relations Commission (MERC) challenging the subcontracting decision and seeking to restore the status quo. In addition, the Charging Party had filed a lawsuit against the Respondent Employer in the Kent County, Michigan Circuit Court, alleging tortious interference with the Charging Party's labor contract with GRPS. These proceedings were still pending as of the close of the hearing in this case.

⁴ The Respondent Employer filed with its brief a Motion to Supplement the Record in this case by addition of a copy of its Motion to Stay Proceedings that was filed with the chief administrative law judge and a copy of the Charging Party's Response to said Motion. These pleadings had been omitted from the formal papers received at the hearing. In the absence of any opposition to the Respondent Employer's motion, and in order to complete the record, I shall supplement the formal papers by addition of these two documents. Respondent's Motion to Supplement the Record will be designated as ALJ Exh.t 1 and the Motion to Stay and Charging Party's Response will be designated as ALJ Exhs. 2 and 3 respectively.

⁵ I hereby grant the Respondent Employer's unopposed motion to correct the transcript. This motion shall be made a part of the record as ALJ Exh. 4.

⁶ States and their political subdivisions are explicitly excluded from the definition of the term "employer" at Sec. 2(2) of the Act.

try. It is undisputed that, at some point after the Respondent Employer was awarded the transportation contract by GRPS and hired employees to perform work under that contract, GRESPA made a demand for recognition as the representative of these employees. I find that these facts are sufficient to establish that GRESPA is a labor organization as that term is defined in the Act. Although the employees it currently represents and the transportation employees it previously represented when GRPS operated its own transportation service were technically not “employees” within the meaning of the Act because they were employed by a political subdivision, GRESPA is seeking to represent the employees currently employed by the Respondent Employer who are employees within the meaning of the Act. The Board has held that this is sufficient to satisfy the statutory definition. *Gino Morena Enterprises*, 181 NLRB 808 fn. 2 (1970). Accordingly, I find that GRESPA is a labor organization as defined by Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. Facts

The Charging Party, GRESPA, was certified by MERC on June 3, 1993 as the exclusive collective-bargaining representative of the following unit of GRPS’ employees:

All non-supervisory employees in operations, supply, transportation, food service and maintenance, excluding all temporary (less than (30) days) employees, supervisors, management supportive service staff and all other employees.

Since that time, GRESPA and GRPS have entered into a series of collective-bargaining agreements establishing the wages, hours and other terms and conditions of employment for this unit. The most recent collective-bargaining agreement was effective for the period July 1, 2004 through June 30, 2006. The essentially wall-to-wall unit of nonteaching, nonclerical employees included such classifications as custodians, building and grounds workers, skilled maintenance employees, supply clerks, truckdrivers, and cafeteria workers in addition to the bus drivers, mechanics and “dispatcher/route planners” who worked in the transportation department before June 2005.⁷

GRPS is a large, urban school district serving more than 22,000 students in about 100 schools. During the 2004–2005 school year, GRPS employed more than 4000 people, including the 536 employees who were employed in the GRESPA bargaining unit. Of these, approximately 168 worked in the transportation department located at 900 Union Street in the city of Grand Rapids. Included in this group were bus drivers, route planners, and mechanics. Also employed by GRPS in the transportation department at 900 Union Street were the five dispatchers and one payroll clerk included in the GRAEOP-represented clerical bargaining unit. GRPS employed two transportation supervisors at 900 Union Street, i.e., Margaret Kangas and Veronica Lowe. Don Sinke, the transportation director, was an employee of Dean Transportation who worked

for GRPS under a management services agreement in effect for the 2004–2005 school year.

The bus drivers in the GRESPA unit provided transportation for regular and special education students. Those drivers transporting special education students, approximately 97 of the unit employees, were jointly employed by GRPS and the Kent Intermediate School District (KISD) pursuant to July 2002 agreements between the two school districts and between the districts and GRESPA and GRAEOP.⁸ KISD is a countywide school district created under the laws of Michigan to, inter alia, provide educational services to students with special needs. The city of Grand Rapids is the largest school district within the county. The KISD is broken down into four regions. GRPS is the only school district in Region IV. Most of its special education students attend programs within the geographic boundaries of GRPS. GRPS also operates several programs on the Lincoln School campus outside the city of Grand Rapids that serves students from GRPS as well as other districts within the county. Regions I, II, and III of the KISD are comprised of a number of smaller school districts within Kent County. The Respondent Employer has a management services contract with KISD for the transportation services of special needs students in Regions I and II. It provides supervision and route planning services to those Regions but does not employ the bus drivers. The Region I and II special education bus drivers are employed by KISD and their respective local school districts and are represented by the KCEA, another MEA affiliate. Since 2000, the Respondent Employer has had a contract with KISD to provide transportation for special needs students in Region III, which has a transportation facility on 36th Street, just outside the city limits of Grand Rapids. The Region III drivers have been included in the DTEU unit since the Respondent Employer took over the contract. The bus drivers who transport regular education students in the school districts that comprise KISD Regions I, II, and III are employed by their individual districts and are represented by other MEA-affiliated unions.

As noted above, the GRPS transportation department was located at 900 Union Street. This facility consisted of several buildings and a parking lot. The main building housed the main transportation department office as well as the offices of several other GRPS departments, such as grounds maintenance. Also located at 900 Union Street was a building housing the drivers’ lounge and parts storage for the transportation department and a garage where the unit mechanics repaired and maintained the school busses. The busses were parked in the parking lot at 900 Union Street when not in use transporting students. This is also where the drivers gassed up the busses before taking them out on the road.

All of the employees in the GRPS transportation department worked at 900 Union Street. The transportation department was located on the first floor of the building, in the back, with a separate entrance from the parking lot. Transportation Director Sinke had an office, and Supervisors Kangas and Lowe had cubicles, in the main office located on the first floor of the

⁷ A separate classification of “dispatchers” employed in the transportation department, which had been included in this unit until about 2003, was represented in 2005 as part of a clerical bargaining unit by GRAEOP, another affiliate of the MEA.

⁸ KISD’s employees are represented by another union, the Kent County Education Association (KCEA), which was also a party to the agreement.

building. The dispatchers and payroll clerk who were part of the GRAEOP unit worked at desks in an open area in front of the office. They would also man the reception window as needed. The route planners worked in a separate room within the transportation department. A conference room adjacent to the route planners work area served as their breakroom. The bus drivers reported to the office every morning to punch in and retrieve mail or messages from their mailboxes located in the office. From there, they would go to their assigned bus, perform a preroute inspection, gas up the bus and go on their way. At the end of their day, they would return to the office to punch out. In between routes, the drivers could wait in the drivers lounge or, while off the clock, leave the facility and return for their afternoon runs. While driving the busses, the drivers would communicate with the dispatchers at the office via radio. The drivers also interacted with the dispatchers when they came to the office in the mornings and afternoons. The payroll clerk, who also worked as a dispatcher on occasion, handled payroll for GRPS and KISD drivers and had regular contact with the drivers regarding payroll issues.

The three route planners employed by GRPS in 2004–2005 were paid an hourly rate, punched a timeclock, and received the benefits provided under the GRESPA collective-bargaining agreement. The route planners typically were promoted from the ranks of bus drivers, were required to maintain their CDL license and filled in for drivers as needed. The main part of their job involved using a computer program called Versa Trans to create and adjust the drivers' routes based on school census reports showing where students lived. The route planners created both regular and special education routes. Kangas, the supervisor, would compile the routes created by the route planners into "runs" which she assigned to the drivers on the basis of seniority. The drivers would interact with the route planners during the course of the year to provide feedback regarding how the routes worked in practice and to seek adjustments if there were problems with the routes as designed by the computer. The route planners also filled in for the dispatchers on occasion.

GRPS employed a lead mechanic and seven mechanics who worked in the garage performing scheduled maintenance and repairs as needed. The mechanics reported to Kangas and Sinke. They would occasionally go into the office or the drivers lounge, where the parts room was located, but had their own area within the garage to take breaks and eat lunch. The mechanics had frequent interaction with the drivers who would communicate by radio in the event they encountered a problem with the bus while on their routes and through regular discussions at 900 Union Street regarding the condition of their busses and the need for maintenance or repair.

On April 18, at a meeting of its Board of Education, GRPS approved a resolution to outsource student transportation services based on a proposal that had been submitted by the Respondent Employer. The impetus for this decision appears to have been budgetary restrictions and the desire of the Board to save money through subcontracting. At another meeting of the Board, on May 16, GRPS formally accepted the proposal and authorized staff to enter into a contract with the Respondent Employer to provide transportation services in the coming

school year and to permanently lay off the transportation department employees effective June 9, the end of the current school year. There are two contracts between the Respondent Employer and GRPS effectuating this decision. One is for a 5-year period and covers the transportation of regular education students. The second, which includes KISD as a party, was a 5-year extension of the 2000 agreement between the Respondent Employer and KISD covering transportation services for students in the six school districts in Region III of KISD, identified as the "Special Education Transportation Consortium," with GRPS added as a part of the Consortium. Both contracts include provisions that the Respondent Employer would use its best efforts to maintain existing routes within GRPS for the first year of the contract and would offer incentives, referred to as transition bonuses, to current GRPS drivers to encourage them to apply for jobs with the Respondent Employer. The goal of the parties' agreement was for the Respondent Employer to maintain continuity in the transportation services it provided to GRPS students.

As noted, under the terms of the Respondent Employer's agreement with KISD and GRPS, GRPS became part of the consortium of six school districts in KISD Region III. At the same time, however, GRPS secured special provisions in the agreement which treated the transportation needs of its special education students differently than the other school districts. The contract contained special terms with respect to route planning, driving, maintenance, employee compensation, and Dean's compensation rates. For example, the Respondent Employer was required to use GRPS' existing Versa Trans software for route planning and to adhere to GRPS Administration directives. Both the regular education and special education contracts gave the GRPS Superintendent the right of final approval for any route changes. In addition, both contracts required the Respondent Employer's mechanics to continue to use GRPS maintenance software.

Kellie Dean, the Respondent Employer's president, met with the bus drivers employed by GRPS at 900 Union Street for the first time on April 19 and 20, soon after the Board of Education initially approved of the plan to subcontract its transportation services. The meeting was held in the drivers' lounge. In addition to Kellie Dean, Troy Scott, the Respondent Employer's Human Resources Director and Don Sinke, the transportation director for GRPS who was also employed by Dean, attended this meeting. The purpose of the meeting was to inform the GRPS drivers of the decision to subcontract transportation services to the Respondent Employer. A document entitled "Standard Driver Transition Outline" was handed out at this meeting. This document provided information regarding the company and its hiring/transition process and compensation package. Kellie Dean did most of the talking at this meeting and responded to questions from employees. He did not testify in this proceeding. The only witness who was at the meeting who testified was Denise Muñoz-Pyle, an employee of the MEA who was assigned by the Union to attend this meeting to find out what was being offered to the employees. She did not identify herself as a union representative but sat in the front row where she was plainly visible to Sinke and the other representa-

tives from the Respondent Employer.⁹ Her testimony was not contradicted by any witness called by the Respondents.

According to the handout and the testimony of Muñoz-Pyle, the drivers were told that they had to apply by April 29 to keep their current seniority and to be eligible for the transfer incentive program, which was a bonus of \$250 a week in the first year and \$150 a week in the second year for transferring drivers who worked at least 3 days a week. In response to a question from a driver, Dean said that GRPS would be paying the bonus. The handout also stated, on the back, under the heading "What Makes Dean Different?":

Dean's desire and intent is to retain existing district employees (who meet transfer contingencies, including reference, background, and criminal checks), and its union contract includes conversion provisions that protect such employees who transfer to Dean by recognizing their original district seniority for pay and bidding.

According to Muñoz-Pyle, one of the drivers asked if Dean had a union. Kellie Dean replied that there was a union, called the Dean Transportation Employees Union, that it was a NLRB-certified union and that the drivers hired by Dean to work under the GRPS contract would be in that union. Kellie Dean told the drivers that he was a "union man." Another driver asked what the union dues would be and Kellie Dean said, "\$10 a year." Kellie Dean also told the drivers that they would have a contract with a grievance procedure affording them the same rights they had as GRESPA members. Muñoz-Pyle testified further that Kellie Dean told the drivers that he hoped to have 150 signed up by April 29, and that he expected to ultimately employ 160–170 drivers. He also told the drivers that it was his hope and desire that all of Dean's drivers would be former GRPS drivers. When one of the drivers at the front of the room asked Kellie Dean if the Grandville drivers would be able to bid into their positions, Dean responded, "No. You will be your own local. They will not be able to bid into your position."¹⁰ In response to another question, Kellie Dean also denied that the Respondent Employer would be hiring extra drivers to break up their routes. He said that it was his intent to put the least amount of busses on the road and have the least amount of drivers to do the work. During this meeting, which lasted about 2 hours, Kellie Dean also told the drivers that Dean would continue to use Versa Trans software for route planning, that Don Sinke would continue to serve as transportation director to ensure continuity and that he was going to keep the busses they were currently driving, although he planned to purchase additional busses. Kellie Dean assured the drivers that "Grand Rapids work would stay with Grand Rapids drivers." He concluded the meeting by telling the drivers that Human Resources Director Scott would return the next day with applications and information about the Union and that Scott would get them all signed up for the Union. Kellie Dean followed up

the meeting by sending all the drivers a letter, dated April 21, thanking them for attending the meeting and encouraging them to apply by the April 29 deadline. He assured the drivers that they could still apply after April 29, but they would not then be eligible for the transition bonus or seniority credit.¹¹

Judy Wilson is a former GRPS and KISD special education bus driver who now works for the Respondent Employer. She did not attend Kellie Dean's April meeting with the drivers but did apply for a job with Dean before the April 29 deadline. She testified at the hearing that, after submitting her application, she met with Brenda Witteveen, the Respondent Employer's West Regional Manager for an interview. On June 1, she met with Witteveen again to fill out her employment papers for Dean. Also present for the Respondent Employer was a woman named Sharon who had been hired by the Respondent Employer to work as a receptionist at 900 Union Street. There were about 10 drivers, including Wilson, there to sign papers. They met at GRPS main office. Included in the stack of forms the employees had to complete was a dues-checkoff authorization for the Respondent Union. When Wilson asked what this form was, Sharon told her it was a union paper and that she had to sign it to work there. Sharon told her it cost \$10 a year and that she would be part of the Dean Union. Wilson then signed the form. The parties also stipulated that, in late May and early June, union dues-checkoff authorization forms for the Respondent Union were passed out to regular and special education bus drivers. These forms stated that, upon completion of a 90-day probationary employment, the employees were required to become members of DTEU or pay a service fee to the Union "in an amount determined by the Union in accordance with applicable law." The form authorized the payroll deduction of the union dues or service fee in the first payroll period in the month of December.

On June 9, GRPS and KISD permanently laid off their respective transportation department employees pursuant to notices that had been mailed to each employee on May 18. Effective June 10, pursuant to the terms of its agreements with GRPS and KISD, the Respondent Employer began providing transportation services for regular and special education students in GRPS, including the maintenance and repair of buses and route planning and dispatch operations. As part of its arrangements with GRPS and KISD, the Respondent Employer leased the transportation facilities at 900 Union Street and purchased the school buses that had been used by GRPS and KISD to transport students. Don Sinke continued in his position of Transportation Director and Margaret Kangas was hired by Dean to be a transportation supervisor, the same position she held for 10 years with GRPS. Veronica Lowe, the other GRPS supervisor, was not hired by the Respondent Employer. Effective June 10, the Respondent Employer also hired seven dispatchers to work at the 900 Union Street transportation office. Six of these dispatchers had been working as bus drivers at the same facility

⁹ In a pretrial affidavit, Muñoz-Pyle stated that she attended the meeting as a prospective employee looking for work.

¹⁰ "Grandville drivers" referred to those KISD drivers employed by Dean to transport special education students in Region III, which was based at a garage on 36th Street, just outside the city limits.

¹¹ There is no evidence that the Respondent Employer held similar meetings with any other transportation department employees and very little evidence regarding the hiring process used by the Respondent Employer to fill the route planner, dispatcher, and mechanic positions under its contract with GRPS.

until June 9. The remaining dispatcher was Shelley DeKlein, previously employed by GRPS as the payroll clerk. She has continued to perform payroll duties, in addition to dispatching, since being hired by Dean.¹² The Respondent Employer hired three route planners to start on June 10. Two of these route planners were employed in the same capacity by GRPS until June 9. The third previously worked for GRPS as a dispatcher until June 9. To perform maintenance and repair functions in the garage at 900 Union Street, the Respondent Employer hired four mechanics and a lead mechanic. Virgil Packard, the lead mechanic, was employed until June 9 by GRPS as a head mechanic. Three of the four mechanics hired by the Respondent Employer also worked in the same position for GRPS until June 9.¹³

There is no dispute that a majority of the drivers hired by the Respondent Employer to transport regular and special education students for the GRPS were employed by GRPS and/or KISD in the GRESPA unit until June 9. In fact, when the Respondent took over transportation services June 10, all 107 drivers employed at 900 Union Street were former GRESPA unit drivers. In addition, 6 former unit drivers were now employed by the Respondent Employer in the formerly nonunit position of dispatcher. By the start of the school year, in September, the Respondent Employer had a total of 137 drivers transporting students for GRPS and KISD from the 900 Union Street facility. Of this number, 100 were previously employed as drivers in the GRESPA unit.¹⁴

There is no dispute that, on September 1, GRESPA sent the Respondent Employer a letter stating that it was “the recognized exclusive collective bargaining representative of the employees performing transportation services for [GRPS] students that have been hired by Dean Transportation.” GRESPA then requested that the Respondent Employer recognize it as the exclusive representative of “the unit employees, including the full and part time bus drivers, dispatchers, mechanics, route planners” and bargain with GRESPA as their representative. The letter concluded by asking the Respondent Employer to contact it by September 15 to set up dates to begin negotiations. On September 15, the Respondent Employer responded to this request by letter from Kellie Dean, indicating that the Respondent Employer had received GRESPA’s letter on September 6. Dean disputed GRESPA’s claim that it represented the employees in question and refused to recognize that Union. The parties have stipulated that, at all times since June 10, the Respondent Employer has recognized the Respondent Union as the exclusive bargaining agent of bus drivers employed at 900 Un-

ion Street and that the Respondent Union has accepted such recognition. The parties also stipulated that the Respondents have applied their existing collective-bargaining agreement to the drivers employed at 900 Union Street since June 10. The Respondent has not recognized any Union with respect to the route planners, dispatchers, and mechanics it hired to work at 900 Union Street under its contract with GRPS and KISD. Instead, the Respondent Employer has treated these employees as unrepresented.

As noted above, the Respondent Employer commenced operations under its contract with GRPS and KISD on June 10. During the summer months, the Respondent Employer provided transportation for students enrolled in summer special education programs with a smaller complement of employees, including former GRPS/KISD employees and new hires. By the start of the school year in September, the Respondent Employer’s employment reached its full complement.¹⁵ The undisputed evidence establishes that, after taking over the transportation services for GRPS and KISD, the Respondent Employer continued transporting essentially the same regular and special education students to the same schools, utilizing essentially the same buses¹⁶ with a majority of the same drivers. At least during the first year of the contract, these drivers were following the same routes as before with variations based on changes in school census data. These routes were planned by the route planners, a majority of whom held the same positions with GRPS, using the same computer software as before while working in the same office. The buses were still parked in the same lot at 900 Union Street and the drivers continued to punch the same timeclock in the same office and continued to gas up the buses at the same pumps as before. These buses continued to be maintained and repaired in the same garage by essentially the same mechanics. The drivers also continued to use the same building for their drivers’ lounge. Don Sinke continued as the transportation director and at least one of the supervisors, Kangas, continued in the same position. Sinke works out of the same office he occupied while working for GRPS while Kangas works in the same cubicle which has been enlarged.¹⁷ Although the Respondent Employer employed an almost entirely new staff of nonunit dispatchers, all but one had been hired by the Respondent from among the bus drivers’ colleagues. The

¹² In August 2005, the Respondent Employer hired one more dispatcher, Juanita Carranco, who had not previously worked for either GRPS or KISD.

¹³ The facts set forth in this paragraph are undisputed, having been stipulated by the parties at the beginning of the hearing.

¹⁴ These numbers are taken from Jt. Exh. 18, which was stipulated by the parties to be a summary showing the drivers, route planners, and mechanics who were employed by the Respondent Employer at any time from June 10 to the date of the hearing. I have been unable to determine the source for the numbers cited by the Respondent in its brief, indicating that it hired approximately 79 former unit drivers and 44 from outside the GRESPA unit.

¹⁵ Kangas, the transportation supervisor who has worked for both GRPS and the Respondent Employer, testified that fewer bus drivers were needed at the start of the 2005–2006 school year because of declining enrollment in GRPS. She also testified that the trend has been a decline in regular education students while special education students have increased resulting in a reversal in the ratio of regular to special education drivers needed.

¹⁶ The parties stipulated that the Respondent Employer transferred 18 of the 180 buses it purchased from GRPS and KISD to Lansing during the school year. Other buses were out of service and some new buses were added during the year.

¹⁷ The other GRPS supervisor, Veronica Lowe, was not hired by the Respondent. One of the former GRPS route planners who was hired by the Respondent, Holly Gladstone, has been given the additional title of assistant supervisor and fills in for Sinke and Kangas if they are absent. Kangas testified that Gladstone is also responsible for resolving disputes between parents and the schools over transportation issues.

remaining dispatcher would have been familiar to the employees as GRPS former payroll clerk and she continued performing the same payroll functions as before, in addition to her dispatch duties.

The evidence in the record reveals that, while many things remained the same, as noted above, the Respondent Employer did make several operational changes and changed the management hierarchy after it took over the transportation department at 900 Union Street. Transportation Director Sinke and Supervisor Kangas no longer report to the GRPS administration. Instead, Dean's West Regional Manager, Brenda Witteveen, has been assigned oversight of the 900 Union Street facility. Witteveen has been involved in interviewing and hiring employees for 900 Union Street. She visits the facility regularly and is in frequent contact with Sinke and Kangas. She does not, however, have an office at 900 Union Street. The mechanics at 900 Union Street, who previously were supervised by Sinke or Kangas, now report to the Respondent Employer's director of fleet services, Scott Pellerito, or the assistant director, Andre Sanford. Pellerito's office is located in Lansing and Sanford's office was at the 36th Street facility until shortly before the hearing when he moved his office to Union Street. Pellerito, in testifying for the Respondent Employer, suggested there was no on-site supervisor for the mechanics, other than Virgil Packard, who continues to hold the position of lead or head mechanic that he held with GRPS.¹⁸ Kangas testified, on the contrary, that she and Sinke continue to have some supervisory authority over the mechanics.¹⁹ There is no dispute that the route planners continue to be supervised by Kangas.

Although the route planners continue to perform their jobs in the same location, using the same tools, and reporting to the same supervisor, they are now salaried rather than hourly paid. Because they are not covered by Dean's collective-bargaining agreement with DTEU, the route planners receive benefits that are not only different than they did under the GRESPA contract with GRPS, but are different from those received by the DTEU-represented drivers. The route planners were not required to punch a timeclock when the Respondent Employer first began operations at 900 Union Street but have recently resumed punching the clock. Kangas testified that the timeclock was reinstituted to address concerns about fairness in distribution of hours among the route planners.²⁰

The Respondent Employer also made changes in the way the mechanics perform their jobs. Pellerito testified that, at the request of the mechanics, the Respondent Employer converted from the two-shift operation that GRPS had to one shift, with all the mechanics now working days. Although the mechanics continue to utilize the GRPS computer system for tracking work orders, they now have new inspection reports and other

paperwork to complete for Dean. Because the mechanics are also not covered by the DTEU contract, they receive different wages and benefits than they did with GRPS. The Respondent Employer also provides the mechanics with a tool allowance and requires them to wear uniforms with Dean's logo.

The bus drivers have also experienced changes in their work routine since the Respondent Employer assumed operation of the transportation department.²¹ They must now perform a more detailed and time-consuming pre-trip inspection and complete a lengthier form than was required by GRPS and KISD. The drivers also have additional duties to perform while doing their jobs. For example, the Respondent Employer's drivers are required to complete an attendance log which shows a "headcount" of students they transported each day to and from their assigned schools. The drivers must keep track of the total miles driven during an assigned run. These reports are then submitted to GRPS for purposes of performing mileage audits required under the Respondent Employer's contract. Drivers now must also report the starting and ending times of their runs on a timesheet to account for their hours of work. This is in addition to punching the timeclock in the transportation office. According to Kangas, there has also been a change in the way routes are assigned. Whereas Kangas assigned the routes under the GRPS/KISD regime, the drivers were permitted to choose their routes, on the basis of seniority, at the beginning of the 2005–2006 school year.²² Any routes not selected in this manner were assigned by Kangas.

Because the 900 Union Street facility is now part of a multi-facility enterprise, the employees working there are now subject to the Respondent's corporatewide rules and policies and the drivers are also subject to the terms of the collective-bargaining agreement between the Respondent Employer and DTEU. The record reveals that the Respondent Employer also provides annual in-service training to its drivers at the beginning of the school year and other training to all its employees, including health and safety training. Because of the change in collective bargaining representative, the employees at 900 Union Street have also experienced changes in labor relations. Drivers are now covered by the DTEU grievance procedure. Under that procedure, the first step is handled by the immediate supervisor, which in the case of 900 Union Street, would be Kangas or Sinke. Kangas testified that no grievances had been filed since the Respondent Employer took over transportation services for GRPS and KISD. Higher steps in the procedure are handled by the Respondent's labor relations staff based in Lansing. Because the mechanics and route planners no longer have a collective-bargaining representative, they are not covered by the grievance procedure.

According to Brian Thrasher, the Respondent Employer's vice president and business manager, Dean has a centralized

¹⁸ There is no evidence in the record regarding what, if any, authority, Packard has over the other mechanics.

¹⁹ Sinke was not called as a witness by any party in this proceeding.

²⁰ The dispatchers, who were not part of the GRESPA unit, also were converted from hourly to salary when the Respondent took over the transportation department. As with the route planners, they have recently resumed using a timeclock to record their hours.

²¹ The Respondent Employer has also changed the logo on the side of the buses from GRPS to Dean Transportation.

²² As previously noted, GRPS and KISD drivers who applied before April 29 were credited with their seniority by the Respondent. The Respondent thus used the GRPS/KISD seniority dates for route bidding purposes. Consistent with the Respondent's contract with DTEU, drivers at 900 Union Street have their own seniority list.

hiring process where applications and/or resumes received at local facilities, like 900 Union Street, are forwarded to the human resources department in Lansing where decisions are made whether to interview or hire an applicant. This process was not all that different from the way hiring was done by GRPS. According to Fredericka Williams, the executive director of human resources for GRPS, the human resources department advertised when positions were open, the transportation supervisors would receive applications and do initial interviewing and screening and then forward this information to human resources for final action.

When the Respondent Employer took over transportation services for GRPS and KISD, it already had contracts with a number of other school districts in the State of Michigan. Virtually all of them were for special education transportation. The GRPS contract was the first with a significant component of regular education drivers. The Respondent Employer in fact began operations in 1969 as Special Transportation Services, Inc. specializing in providing transportation for special education students. Its first contract was with the Lansing, Michigan Public Schools. The Respondent Employer has been headquartered in Lansing since that time the Lansing facility, which is the Respondent Employer's largest, houses its corporate headquarters as well as facilities to service the transportation contract in Lansing.²³ Lansing is approximately 74 miles from the GRPS facility on Union Street. The Respondent Employer employs 275 drivers and 18 mechanics, out of a total of 425 employees, in Lansing.

The Respondent Employer changed its name to Dean Transportation, Inc. when Kellie Dean purchased the company. According to Thrasher, part of the reason for the name change was to avoid the stigma attached to the term "special education." In 1976, the Respondent Employer recognized the Respondent Union²⁴ following its certification by MERC based on the results of an election conducted May 21, 1976 among the Respondent Employer's 69 Lansing drivers. The certification defines the unit as follows:

all hourly paid drivers, excluding substitute drivers, supervisors, personnel, office and clerical employees, managerial employees, and maintenance and custodial employees.

There is no specific geographic location identified in the certification.

In 1980, the Respondent Employer began providing special education transportation services for the Alma Regional Educational Services District with facilities in Alma and Mount Pleasant, Michigan. The Respondent Employer now employs 6 drivers and 3-4 bus attendants in Alma and 4 drivers and 3-4 bus attendants in Mount Pleasant, along with a site supervisor

for each location.²⁵ The Alma and Mount Pleasant facilities are both more than 80 miles from Union Street. In 1996, the Respondent Employer began transporting special education students for the Clinton County ISD from a facility in St. John, Michigan, which is about 75 miles from the Union Street facility. The Respondent Employer currently employs 14 drivers, 2 attendants, a site supervisor, and a dispatcher at that facility.

As noted above, the Respondent Employer began transporting special education students for KISD Region III in 2000, with operations based at a garage on 36th Street just outside the city limits of Grand Rapids. The Respondent Employer took over this operation from the Grandville Public Schools, one of six school districts in the Region. This facility is 8 miles from 900 Union Street. The Respondent Employer had 60 drivers, 3-4 bus attendants, a transportation supervisor, a site supervisor, a route planner, and a mechanic working at this facility in 2005-2006. Although some of the students in Region III attend special education programs at schools within GRPS, none of GRPS' special education students attend programs in Region III. There is no dispute that the Region III drivers on occasion traverse the territory of GRPS while transporting their students.

In 2004, the Respondent Employer entered a contract to provide transportation for students in the Ottawa Area ISD, based in Holland, Michigan. This ISD encompasses the county adjacent to Kent County. The Holland facility, which employs 35-40 drivers, is 32 miles from 900 Union Street. Later in 2004, the Respondent Employer began providing special education transportation services for the Eaton ISD, based in Charlotte, Michigan. The Respondent Employer employs 40-45 drivers, 8-10 attendants, 2 mechanics, and a route planner at the Charlotte facility. That facility is about 60 miles from 900 Union Street.

At all of the facilities acquired by the Respondent Employer over the years, the Respondent Employer has included drivers and bus attendants in the DTEU unit, without any elections. The Respondents have done this based on the broad definition of the unit contained in the Respondent Union's certification and the parties' successive collective-bargaining agreements.²⁶ As of April 2005, there were 550 drivers in the DTEU unit.

In order to deal with its expansion, the Respondent Employer has reorganized its operations into two regions. The West Region, under the direction of Witteveen, includes the KISD Region III facility at 36th Street, the former GRPS facility at 900 Union Street, and the Holland facility. In addition, a facility on Hall Street where the Respondent Employer's sister company administers the management services contract for KISD Re-

²³ Although most of its work in Lansing involves transportation of special education students, the Respondent Employer also provides transportation for regular education students enrolled in a public charter school and several parochial schools.

²⁴ The Respondent Union was known at the time as the Special Transportation Employees Association. It also changed its name when the Respondent Employer did so.

²⁵ GRPS and KISD also employed bus attendants when the Respondent Employer took over the transportation operation there but the bus attendants remain employees of GRPS and have not been included in the DTEU unit.

²⁶ Article A-700 of the Respondent Employer's contract with DTEU provides:

The Employer does hereby recognize the Dean Transportation Employee Union as the exclusive representative for the purpose of collective bargaining in respect to rates of pay, wages, hours of employment and other conditions of employment for the term of this Agreement of all Employees of the Employer included in the bargaining unit including all Drivers and Attendants.

gions I and II is included in the West Region. The remainder of the Respondent Employers facilities make up the Central Region.²⁷ According to Thrasher, the regional managers supervise the site supervisors, disseminate changes in company policy or state legislation affecting the Respondent Employer's operations to the local facilities, and coordinate efforts of the local site supervisors to ensure coverage for runs, special events, or trips. On occasion, this has resulted in the temporary reassignment of drivers from one facility to another. The two regional managers report to Bill Foley, the Respondent Employer's director of operations, who works in Lansing. The Respondent Employer also has two regional fleet managers who oversee the repair and maintenance operations in their respective regions. As noted above, Andre Sanford is the west regional fleet manager responsible for the five mechanics at 900 Union Street and the one mechanic employed at 36th Street.²⁸ All of the Respondent Employer's top managers, including Kellie Dean, Foley, Thrasher, and Human Resources Director Troy Scott, are located in the Lansing corporate office. These managers formulate corporatewide policies, handle collective-bargaining negotiations with DTEU and make the final decisions regarding hiring and termination of employees. According to Thrasher, all employee personnel files are kept at the Lansing office. The Respondent Employer also has a centralized payroll system.

Since taking over transportation services for GRPS and KISD, there have been a few instances of employee interchange. The only mechanic working at 900 Union Street who was not a former GRPS employee is Rich Spaans, who worked for the Respondent Employer at its Lansing facility until transferring to 900 Union Street shortly after June 10. Spaans requested this transfer because it was closer to his home. There is also evidence that, on one occasion, a mechanic from Union Street was temporarily assigned to work as a vacation replacement at the 36th Street garage. This same mechanic was also assigned on another occasion to install child safety alarms on buses at the Holland facility. On rare occasions, the Respondent Employer has also sent buses from 36th Street to Union Street to be repaired. The record contains no evidence of any transfer or interchange among the Respondent Employer's route planners. In fact, the route planners at 900 Union Street use a different computer software to plan routes than the Respondent Employer's other route planners.

There have been three permanent transfers involving Union Street drivers. Rickina Holibaugh transferred from the KISD Region IV facility at 36th Street to Union Street on August 25. Pat Keiser and Vicky Skinner transferred from Union Street to 36th Street on October 21 and January 3, 2006, respectively. Neither had been previously employed by GRPS or KISD and both worked at Union Street only a short time, transferring within their 90-day probationary period.²⁹ In addition to these

permanent transfers, Witteveen testified that, on a couple occasions, substitute drivers from 36th Street substituted at Union Street. She testified further that there were other occasions when Union Street asked for help covering runs but that the 36th Street facility was unable to accommodate the request.

The Respondent Employer also offered evidence to show that special education drivers from Union Street and 36th Street often cover the same territory, driving along the same streets to transport children from their homes to programs in and outside of the city of Grand Rapids. Although students from the school districts that make up KISD Regions I, II, and III do attend some programs at GRPS schools, none of GRPS special education students attend programs operated by other districts. Thus, all of the bus drivers at 900 Union Street are transporting GRPS students to GRPS schools. It should also be noted that not all KISD drivers driving through GRPS territory or transporting students to GRPS schools are employed by the Respondent Employer and included in the DTEU unit. There is no dispute that the special education drivers in Regions I and II are employed by KISD and have their own Union.

In addition, at one location, the Lincoln School campus outside the city limits, GRPS operates a number of programs for special education students from all four regions of the KISD. The Respondent Employer offered evidence that while dropping off and picking up students at this location, drivers from Union Street interact socially with drivers from the 36th Street garage. Both sets of drivers are driving buses with the Dean Transportation logo to distinguish them from the KISD buses serving Region I and II students. The drivers of those buses are not employed by the Respondent Employer and not represented by DTEU. But, these drivers also have occasion to interact with the Union Street and 36th Street drivers while waiting to drop off and pick up their charges.

B. Analysis and Conclusions

The issues in this case, as framed by the pleadings and the evidence described above are:

1. Whether the Respondent Employer is a successor to GRPS and KISD with respect to the drivers, route planners, and mechanics employed at 900 Union Street.

2. Whether a unit limited to these employees is an appropriate unit for purposes of collective bargaining.

3. If the Respondent Employer is not a successor and had no duty to recognize and bargain with GRESPA, whether the drivers at 900 Union Street were properly accreted to the bargaining unit represented by DTEU.

The Board and the courts will find that an employer has succeeded to its predecessor's bargaining obligation if a majority of its employees, consisting of "a substantial and representative complement," in an appropriate unit are former employees of the predecessor and if the similarities between the two operations manifest a "substantial continuity" in the employing enterprise. *Van Lear Equipment, Inc.*, 336 NLRB 1059, 1063 (2001), citing *Fall River Dyeing & Finishing Corp. v. NLRB*, 482 U.S. 27, 41-43 (1987); *Burns Security Services*, 406 U.S. 272, 280 fn. 4 (1972). The Board will normally assess whether an employer is a successor as of the time a union makes its demand for recognition and bargaining, provided the employer

²⁷ Esther Sanford is the central region manager. Her office is in Lansing.

²⁸ Joe Mayhew is the central region fleet manager. His office is in Lansing.

²⁹ Keiser was hired by the Respondent Employer on July 21, and Skinner was hired November 9. Personnel records show that Skinner last worked at 900 Union Street on December 17.

has already hired a substantial and representative complement of employees. See *MSK Corp.*, 341 NLRB 43, 44–45 (2004). A union’s demand for recognition need not be in any particular form. It is sufficient if the union clearly conveys to the putative successor its desire to negotiate on behalf of employees in an appropriate unit. *Id.* at 44; *Hydrolines, Inc.*, 305 NLRB 416, 420 (1991).

With respect to the issue of “substantial continuity,” the Supreme Court, in *Fall River Dyeing*, *supra*, identified the following factors as relevant:

[W]hether the business of both employers is essentially the same; whether the employees of the new company are doing the same jobs in the same working conditions under the same supervisors; and whether the new entity has the same production process, produces the same products and has basically the same body of customers.

482 U.S. at 41–43. The above factors are to be assessed from the perspective of the employees, i.e., “whether ‘those employees who have been retained will . . . view their job situations as essentially unaltered.’” *Id.*, quoting *Golden State Bottling Co. v. NLRB*, 414 U.S. 168, 184 (1973). Accord: *Van Lear Equipment, Inc.*, 336 NLRB at 1063. The Board has applied this test even where, as here, the predecessor is a public entity. *Id.*, at 1064; *Community Hospitals of Central California*, 335 NLRB 1318 (2001), *enfd.* 335 F.3d 1079 (D.C. Cir. 2003); *Lincoln Park Zoological Society*, 322 NLRB 263 (1996), *enfd.* 116 F.3d 216 (7th Cir. 1997); *JMM Operational Services*, 316 NLRB 6 (1995). The Board has also found an employer to be a successor even where it has assumed only a discrete portion of the predecessor’s operations and has not taken over the entire bargaining unit. *Van Lear Equipment, Inc.*, *supra*; *Bronx Health Plan*, 326 NLRB 810 (1998).

It is essentially undisputed here that, by the beginning of the 2005–2006 school year, in September, a majority of the bus drivers, route planners, and mechanics hired by the Respondent Employer to carry out its contractual obligations to GRPS and KISD were former employees of GRPS and KISD employed in GRPS transportation department at 900 Union Street that was part of the GRESPA unit. Kellie Dean, in his first meeting with potential employees, made clear his desire to maintain continuity by hiring as many of the GRPS and KISD employees as he could. Pursuant to its contracts with GRPS and KISD, the Respondent Employer offered a bonus to any GRPS/KISD employee willing to accept employment with the Respondent Employer and offered to credit them with their existing seniority.

I am also convinced by a preponderance of the evidence that there is “substantial continuity” in the employing enterprise despite the change in employers. Certainly, when viewed from the perspective of the employees, there has been very little change in their working conditions. The bus drivers continue to report to the same location, drive the same buses, transport the same group of students to essentially the same schools. They report to the same supervisors, Sinke and Kangas, that they did when they worked for GRPS and KISD. While there may be more paperwork involved in fulfilling their assigned tasks, this has not destroyed the continuity in their day-to-day work. The route planners, although now salaried, continue to work in the

same office, doing the same jobs, using the same computer software, and reporting to the same supervisor, Kangas. The mechanics, likewise, work in the same garage, with the same equipment and tools, repairing and maintaining the same buses. Although there has been a change in their supervision, with Sanford taking over direct supervision from Sinke, they still report to Sinke and Kangas if Sanford is not around. In addition, Virgil Packard, the head mechanic at 900 Union Street for GRPS, has continued in the same role for the Respondent Employer. I find, as argued by the General Counsel, that the employing entity has not changed so dramatically that the employees at 900 Union Street would alter their attitude regarding union representation. *Van Lear Equipment, Inc.*, *supra*; *Montauk Bus Co.*, 324 NLRB 1128, 1134–1135 (1997).

The real issue in this case, however, is whether the “unit” of drivers, route planners, and mechanics employed by the Respondent Employer at 900 Union Street since June 2005 is an appropriate unit. The Respondent Employer argues that this single location unit is not appropriate on several grounds. The Respondent Employer contends that the bus drivers working under its contracts with GRPS and KISD have been merged into its companywide bargaining unit of bus drivers represented by the Respondent Union and no longer retain a separate identity. The Respondent Employer argues further that its route planners and mechanics working at 900 Union Street do not share a community of interest with the bus drivers.

The Board has long recognized a presumption that a single plant or store unit is appropriate for purposes of collective bargaining unless it has been so effectively merged into a comprehensive unit, or is so functionally integrated, that it has lost its separate identity. To determine whether the presumption has been rebutted, the Board looks at such factors as central control over daily operations and labor relations, including the extent of local autonomy; similarity of skills, functions, and working conditions; degree of employee interchange; and bargaining history, if any. *D & L Transportation*, 324 NLRB 160 (1997), and cases cited therein. In *Van Lear Equipment, Inc.*, *supra*, a case with many similarities to this case, the Board noted that the presumption was particularly strong where the employees in question had historically been represented in a single-location unit. 336 NLRB at 1063. See also *Trident Seafoods, Inc.*, 318 NLRB 738 (1995). The fact that the employees the Respondent Employer hired to work at 900 Union Street were only a subset of a much larger bargaining unit is not determinative of the appropriateness of the unit because these employees nonetheless had a long history of being represented by GRESPA. *Community Hospitals of Central California v. NLRB*, 335 F.3d 1079, 1085 (D.C. Cir. 2003). The determination of appropriateness of a unit is different in the context of successorship than when determining initially, in a representation case, whether an unrepresented group of employees should be included in a single or multiplant unit.

The Respondent Employer emphasizes its centralized control of labor relations and concomitant lack of local autonomy at Union Street, the commonality of its policies, procedures, wages and benefits among the drivers at its facilities represented by DTEU, its prior bargaining history with DTEU in a multilocation unit, the evidence of employee interchange be-

tween Union Street and other facilities, and the geographic proximity to at least two of its facilities where drivers are represented by DTEU, i.e., 36th Street and Holland. While the evidence offered by the Respondent Employer does show that it is a highly centralized operation, with most decisions regarding policies, procedures, and labor relations being made at the Lansing headquarters, it does have local site supervisors at each location who carry out these policies and are responsible for ensuring that the drivers and employees at their location satisfy Dean's contractual obligations to the respective school districts. Thus, Sinke and Kangas have the authority to determine the proper routes within GRPS and KISD, Kangas assigns the routes to the drivers and authorizes changes if necessary. She is ultimately responsible for ensuring that all runs are covered. Local supervisors handle complaints from parents and schools regarding transportation issues. In the day-to-day operations, it is Sinke and Kangas whom the drivers and other employees report to and take direction from. The evidence also shows that, despite the multifacility unit the Respondent Employer has recognized, the drivers at each facility are treated as separate groups for job assignment and bidding purposes. Even when a driver transfers from one location to another, they go to the bottom of the seniority list at that location. As noted above, in the facts, the degree of interchange between Union Street and the other facilities has been minimal to date and has occurred primarily among the drivers. The route planners and mechanics have certainly maintained a separate identity from similar employees at other facilities. I also note that, while almost all of the drivers employed by Dean at its other locations transport special needs students, the Union Street facility is the only one with a substantial component of regular education drivers, who do not possess the same degree of skills, nor require the same training, as special education drivers.³⁰

Much of the Respondent Employer's argument against a finding of a single appropriate unit depends upon a finding that the employees at 900 Union Street constitute an accretion to the DTEU unit. It is, after all, the Respondent Employer's decision to include former GRPS and KISD drivers in the DTEU unit that has created the situation where they share common wages and benefits with drivers at its other facilities. Because accretion essentially deprives employees of their statutory right to choose their bargaining representative, the Board has historically followed a restrictive policy in applying the accretion doctrine. See *Frontier Telephone of Rochester, Inc.*, 344 NLRB No. 153 (2005), and cases cited therein. The Board permits accretion "only where the employees sought to be added to an existing bargaining unit have little or no separate identity and share an overwhelming community of interest with the preexisting unit to which they are accreted." *E. I. DuPont de Nemours, Inc.*, 341 NLRB 607, 608 (2004). The factors

considered by the Board, many of which are also relevant to unit determinations in initial representation cases, include integration of operations, centralized control of management and labor relations, geographic proximity, similarity of terms and conditions of employment, similarity of skills and functions, physical contact among employees, collective-bargaining history, degree of separate daily supervision, and degree of employee interchange. The two most important factors cited by the Board, identified as "critical" to a finding of accretion, are employee interchange and common day-to-day supervision. *Id.* Accord: *Frontier Telephone of Rochester, Inc.*, supra.

As already noted, many of the factors that would support a finding of accretion are found here. However, the two "critical" factors are absent. The overwhelming evidence in this record establishes that the drivers at 900 Union Street do not share common day-to-day supervision with the Respondent Employer's drivers at its other facilities. The former GRPS and KISD drivers continue to report on a daily basis to Sinke and Kangas. While Sinke and Kangas may have to report to Witteveen and others in the Respondent Employer's management hierarchy, the individuals who determine the drivers' daily routine are unique to them. There is no evidence that Sinke or Kangas have any daily supervisory authority over the drivers at Dean's other facilities and no evidence that the site supervisors from these other facilities have any authority over the drivers at 900 Union Street. In addition, there is very little evidence of the kind of employee interchange that would support a finding of accretion. The three incidents of permanent transfer of drivers between Union Street and 36th Street are not significant. As the Board noted in *Frontier Telephone of Rochester, Inc.*, supra, temporary interchange is more important than permanent interchange because it shows the degree to which there has been a merger of the two groups of employees. There is virtually no temporary interchange of employees here.³¹

In addition to the absence of these two critical factors, other factors strongly support a finding that there has been no accretion. As noted, the regular education drivers at 900 Union Street do not share similar skills and functions with the special education drivers at Dean's other facilities. Moreover, the drivers at 900 Union Street have more of a community of interest with the route planners and mechanics at that facility than with the bus drivers at Dean's other facilities by virtue of their shared bargaining history. The bus drivers at 900 Union Street have a long history of inclusion in a unit with the route planners and mechanics that can not be ignored. In addition, they have much more frequent interaction with these employees and share day-to-day supervision with them. Based on the above, I find that the Respondent Employer has not proved that the drivers at 900 Union Street have lost their separate identity or that they

³⁰ Although the trend has been that the ratio of special education drivers to regular drivers has been going up, there will always be a need for a significant number of regular education drivers at 900 Union Street, since GRPS will always have regular education students needing transportation. This is in contrast to all the other facilities operated by the Respondent Employer where its contract with the respective school district only covers special education.

³¹ I attach very little weight to the evidence that drivers from 900 Union Street have the opportunity to interact socially with drivers from 36th Street while dropping off and picking up students at the Lincoln School campus. This interaction is no different than the interaction the GRPS/KISD drivers had before the change in employer and the interaction they continue to have with KISD Region I and II drivers who are represented by a different union and also make stops at Lincoln School. It certainly does not demonstrate that the 900 Union Street drivers have lost their separate identity.

have an “overwhelming community of interest” with drivers at its other facilities.

I find, based on the above, that the General Counsel has established that the Respondent Employer is a successor to GRPS and KISD with respect to the drivers, route planners, and mechanics employed at the 900 Union Street facility. It was thus obligated under the Act to recognize and bargain with GRESPA upon request. The Respondent Employer contends that GRESPA never made a proper bargaining demand because the unit described in GRESPA’s September 1 letter was either not appropriate, or was not the unit which it represented under its collective-bargaining agreement with GRPS and KISD. In making this argument, the Respondent Employer relies upon GRESPA’s inclusion of the term “dispatchers” in the letter. I agree with the General Counsel that the Union’s demand, when read in its entirety, is sufficient to convey to the Respondent Employer GRESPA’s desire to negotiate on behalf of an appropriate unit of employees. The first sentence in the letter explicitly states that GRESPA was seeking recognition as the bargaining representative of those “employees performing transportation services for [GRPS] students that have been hired by [the Respondent Employer]” who were formerly included in the GRESPA unit. The use of the term “dispatchers” in the second sentence, although confusing, was consistent with the bargaining history between GRESPA and GRPS where route planners had been classified as “dispatchers/route planners” and had performed dispatch functions as needed. If the Respondent Employer had any doubt about GRESPA’s demand, it certainly could have sought clarification. *Hydrolines, Inc.*, 305 NLRB 416, 419–420 (1991). It is clear, as the General Counsel points out, that the Respondent Employer had no interest in clarifying any ambiguity in GRESPA’s demand for recognition because it had already decided, before even executing the contracts with GRPS and KISD, that the drivers it hired would be represented by the Respondent Union. In fact, that is what Kellie Dean told the employees at 900 Union Street when he first met with them on April 19 and 20.

Having found that the Respondent Employer is a successor to GRPS and KISD with respect to the drivers, route planners, and mechanics it hired to work at 900 Union Street, its September 15 refusal to recognize and bargain with GRESPA, their exclusive collective-bargaining representative, violated Section 8(a)(1) and (5) of the Act as alleged in the complaint. It follows that, because the employees already were represented for purposes of collective bargaining, the Respondent Employer’s decision to recognize the Respondent Union as their bargaining representative by including them in the DTEU unit and to apply its collective-bargaining agreement with DTEU to the bus drivers at 900 Union Street violated Section 8(a)(1), (2), and (3) the Act, as alleged in the complaint. The Respondent Union’s acceptance of recognition as collective-bargaining representative for employees who had not selected that Union as their representative and its receipt of dues deducted from the employees’ wages similarly violated Section 8(b)(1)(A) and (2) of the Act as alleged. Moreover, I would find that the Respondents violated Section 8(a)(1), (2), and (3), and Section 8(b)(1)(A) and (2), respectively, even if the Respondent Employer were not a successor to GRPS and KISD because, as I

found above, the drivers at 900 Union Street were not properly accreted to the existing DTEU unit and there is no evidence that an uncoerced majority of those employees had designated DTEU to be their representative.

I find further that Respondent, through its supervisors and agents Kellie Dean and Brenda Witteveen, restrained, coerced and interfered with its employees Section 7 rights by telling them, at meetings on April 19–20 and in early June, respectively, that they were required to become members of DTEU and to sign dues-checkoff authorizations as a condition of employment with the Respondent Employer. *Mar-Jam Supply Co.*, 337 NLRB 337, 350 (2001); *Acme Tile & Terrazo Co.*, 318 NLRB 425, 427–428 (1995). This finding is based on the credible and undisputed testimony of Muñoz-Pyle and Judy Wilson and the fact that the Respondent Employer’s premature recognition of the Respondent Union was unlawful.

CONCLUSIONS OF LAW

1. The Respondent, Dean Transportation, Inc., is a successor to the bargaining obligations of the Grand Rapids Public Schools and the Kent Intermediate School District with respect to the transportation department employees employed since June 10, 2005 at 900 Union Street, Grand Rapids, Michigan, who were formerly included in the bargaining unit represented by Grand Rapids Educational Support Personnel Association, Michigan Education Association (GRESPA).

2. GRESPA and the Dean Transportation Employees Union (DTEU) are labor organizations within the meaning of Section 2(5) of the Act.

3. By telling employees, on April 19–20 and in mid-June, 2005, that they would be required to join DTEU and pay dues or agency fees to DTEU as a condition of employment with the Respondent Employer, the Respondent Employer has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the Act.

4. By recognizing DTEU as the exclusive collective-bargaining representative of its bus drivers employed at the 900 Union Street facility since June 10, 2005, by applying its existing collective-bargaining agreement with DTEU to those employees since that date, including the union security and dues-checkoff provisions, and by deducting dues and agency fees from these employees and remitting them to DTEU, the Respondent Employer has rendered unlawful assistance and support to a labor organization and engaged in unfair labor practices in violation of Section 8(a)(1) and (2) and Section 2(6) and (7) of the Act.

5. By the conduct described above in paragraph 4, the Respondent Employer has also discriminated regarding the hire or tenure or terms and conditions of employment of its employees, thereby encouraging membership in a labor organization, and has committed unfair labor practices in violation of Section 8(a)(1) and (3) and Section 2(6) and (7) of the Act.

6. GRESPA has, at all material times since June 10, 2005, remained the designated exclusive collective-bargaining representative of the following unit of employees employed by the Respondent Employer:

All full-time and regular part-time transportation employees employed at 900 Union Street, Grand Rapids, Michigan, in-

cluding bus drivers, route planners and mechanics, but excluding dispatchers, clerical employees, professional employees, managerial employees, and guards and supervisors as defined in the Act.

7. By failing and refusing to recognize and bargain with GRESPA as the exclusive collective-bargaining representative of the unit described above, since September 15, 2005, the Respondent Employer has engaged in unfair labor practices in violation of Section 8(a)(1) and (5) and Section 2(6) and (7) of the Act.

8. By accepting recognition by the Respondent Employer as the exclusive collective-bargaining representative of the bus drivers employed at 900 Union Street, by applying and enforcing its collective-bargaining agreement with the Respondent Employer to these employees, and by accepting dues and agency fees deducted from the wages of these employees, at a time when it did not represent an uncoerced majority of the employees, the Respondent Union has been restraining and coercing employees in the exercise of their Section 7 rights and has engaged in unfair labor practices in violation of Section 8(b)(1)(A) of the Act.

9. By the conduct described above in paragraph 8, the Respondent Union has attempted to cause and caused an employer to discriminate against its employees in violation of Section 8(a)(3) of the Act and has engaged in unfair labor practices in violation of Section 8(b)(2) of the Act.

REMEDY

Having found that the Respondents have engaged in certain unfair labor practices, I find that they must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, I shall recommend that the Respondent Employer rescind and the Respondent Union relinquish the recognition accorded the Respondent Union as exclusive collective-bargaining representative of the bus drivers employed at 900 Union Street and that the Respondent Employer recognize and, upon request, bargain with GRESPA as the representative of the bus drivers, route planners, and mechanics employed at this facility. I shall further recommend that the Respondents cease giving effect to their collective-bargaining agreement as applied to the bus drivers employed at 900 Union Street and that they, jointly and severally, make the employees whole for any dues or agency fees that were deducted from their wages by the Respondent Employer and remitted to the Respondent Union pursuant to that collective-bargaining agreement. I shall also recommend that the Respondents post the appropriate notices.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended³²

ORDER

The Respondent, Dean Transportation, Inc., Lansing, Michigan, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Telling employees that they would be required to join the Dean Transportation Employees Union (DTEU), or pay dues or agency fees to that Union, and distributing to employees DTEU membership applications and check-off authorization forms when an uncoerced majority of the employees have not designated DTEU to be their collective-bargaining representative.

(b) Recognizing DTEU as the exclusive collective-bargaining representative of the bus drivers employed at 900 Union Street in Grand Rapids, Michigan.

(c) Applying and enforcing its collective-bargaining agreement with DTEU, including the union security and dues-checkoff provisions, to the bus drivers employed at 900 Union Street in Grand Rapids, Michigan.

(d) Failing and refusing to recognize and, upon request, bargain collectively with Grand Rapids Educational Support Personnel Association, Michigan Education Association (GRESPA) as the exclusive representative of the following unit of employees:

All full-time and regular part-time transportation employees employed at 900 Union Street, Grand Rapids, Michigan, including bus drivers, route planners and mechanics, but excluding dispatchers, clerical employees, professional employees, managerial employees, and guards and supervisors as defined in the Act.

(e) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Withhold recognition from DTEU as the exclusive representative of the bus drivers employed at 900 Union Street in Grand Rapids, Michigan.

(b) On request, recognize and bargain collectively with GRESPA in regard to the wages, hours, and other terms and conditions of employment of the employees in the unit described above and, if an understanding is reached, embody the understanding in a signed collective-bargaining agreement.

(c) Jointly and severally with DTEU, make whole those bus drivers employed at 900 Union Street since June 10, 2005 by reimbursing them for any and all union dues or agency fees that were deducted from their earnings, plus interest computed in accordance with Board policy.

(d) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

³² If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

(e) Within 14 days after service by the Region, post at its 900 Union Street facility in Grand Rapids, Michigan, copies of the attached notice marked "Appendix A."³³ Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since June 10, 2005.

(f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended³⁴

ORDER

The Respondent, Dean Transportation Employees Union, Lansing, Michigan, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Accepting recognition by Dean Transportation, Inc. as the exclusive collective-bargaining representative of the bus drivers employed by Dean at 900 Union Street in Grand Rapids, Michigan.

(b) Applying and enforcing its collective-bargaining agreement with Dean, including the union security and dues-checkoff provisions, to the bus drivers employed at 900 Union Street in Grand Rapids, Michigan.

(c) Accepting and receiving dues and agency fees that were deducted by Dean from the wages of its bus drivers employed at 900 Union Street in Grand Rapids, Michigan.

(d) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Relinquish recognition by Dean as the exclusive collective-bargaining representative of the bus drivers employed at 900 Union Street in Grand Rapids, Michigan.

³³ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

³⁴ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

(b) Jointly and severally with Dean, make whole those bus drivers employed at 900 Union Street since June 10, 2005 by reimbursing them for any and all union dues or agency fees that were deducted from their earnings, plus interest computed in accordance with Board policy.

(c) Within 14 days after service by the Region, post at its union office in Lansing, Michigan, copies of the attached notice marked "Appendix B."³⁵ Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees and members are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, Dean Transportation, Inc. has gone out of business or closed the facility involved in these proceedings, the Respondent Union shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by Dean Transportation, Inc. at 900 Union Street in Grand Rapids, Michigan, at any time since June 10, 2005.

(d) Sign and return to the Regional Director sufficient copies of the notice for posting by Dean Transportation, Inc., if willing, at all places where notices to employees are customarily posted.

(e) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. September 27, 2006

APPENDIX A

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE

NATIONAL LABOR RELATIONS BOARD

An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT tell you that you must join the Dean Transportation Employees Union (DTEU) in order to work for us and WE WILL NOT distribute applications for membership and dues or

³⁵ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

agency fee check-off authorization forms for DTEU when you are hired.

WE WILL NOT recognize DTEU, or any other labor organization, that has not been selected by a majority of you to be your collective-bargaining representative.

WE WILL NOT apply or enforce our collective-bargaining agreement with DTEU to our bus drivers employed at 900 Union Street in Grand Rapids, Michigan.

WE WILL NOT, upon request, fail and refuse to recognize and bargain with Grand Rapids Educational Support Personnel Association, Michigan Education Association (GRESPA) as the exclusive collective-bargaining representative of the unit described below.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with GRESPA and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the following bargaining unit:

All full-time and regular part-time transportation employees employed at 900 Union Street, Grand Rapids, Michigan, including bus drivers, route planners and mechanics, but excluding dispatchers, clerical employees, professional employees, managerial employees, and guards and supervisors as defined in the Act.

WE WILL, jointly and severally with DTEU, make you whole for any dues or agency fees that we deducted from your earnings and remitted to DTEU under our collective-bargaining agreement with DTEU.

DEAN TRANSPORTATION, INC.

APPENDIX B

NOTICE TO MEMBERS AND EMPLOYEES

POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain on your behalf with your employer

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT accept recognition by Dean Transportation, Inc. as your exclusive collective-bargaining representative unless a majority of you have selected us to represent you.

WE WILL NOT apply or enforce our collective-bargaining agreement with Dean Transportation to the bus drivers employed at 900 Union Street in Grand Rapids, Michigan.

WE WILL NOT accept and receive any dues or agency fees that have been deducted from the earnings of bus drivers employed at 900 Union Street.

WE WILL NOT in any like or related manner restrain or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL relinquish recognition as the exclusive collective-bargaining representative of the bus drivers employed by Dean Transportation at 900 Union Street.

WE WILL, jointly and severally with Dean Transportation, make you whole for any dues or agency fees that were deducted from your earnings and remitted to us under our collective-bargaining agreement with Dean Transportation.

DEAN TRANSPORTATION EMPLOYEES UNION